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Ingo Hutter

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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/531,775
Filing Date: April 19, 2005
Appellant(s): HUTTER, INGO

Joel Fogelson
(Registration # 43,613)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 06/07/2010 appealing from the Office action mailed 04/02/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:

Claims 1-11 are pending.

Claims 1-11 are rejected.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

2003/0005130

Cheng

1-2003

Ritchie, J. "UPnP AV architecture: 0.83" (Jun 12, 2002), pp. 1-22

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cheng (US 2003/0005130 A1).

Claim 1

A method for monitoring audio/video connections hereinafter called AV connections which have been set up in a network of distributed stations which are networked with one another via at least one of a wire-free and a wire bus connections (Paragraph [0014], "The resource manager and the path manager are configured to manage device and network resources that are distributed in heterogeneous networks, such as resources distributed in networks using mixed Ethernet, 1394, 802.11, HyperLAN2, USB, HPNA"), wherein

at least two types of stations exist in the network; one type of station being at least one control device for initiating, controlling and removing an AV connection from said AV connections (Paragraph [0023], "UPnP controllers 161 are hereinafter referred to as user control points (UCPs)"), and the other type of station being a controlled device being at least one of an AV server device and an AV renderer device (Paragraph [0024], "controlled, or slave, devices"), wherein

between at least two controlled devices said AV connection can be set up by said at least one control device, and a first device of said at least two controlled devices

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monitors said AV connection to determine whether a second device of said at least two controlled devices, which is AV connected to said first device, has sent a logging-off message whereby when said logging-off message is detected, said first device ends, without an instruction from said at least one control device, the AV connection with said second device (Paragraph [0027], "This invention provides the necessary features and functions to the enabling logic 120 to facilitate efficient and effective transfer of audio-video information, or other time-sensitive information among devices on heterogeneous networks", and Paragraph [0037], "In a preferred embodiment, an application is provided the option of managing resource reservation, path setting, and scheduling activities directly, or it can request the action manager 310 to manage these activities. By providing an action manager 310, the application can be free from the concerns of detailed resource management and path management. Preferably, network resources are allocated and the path is set up immediately prior to the time that an action is to take place, to maximize the use of network resources, although device resources can be reserved well before the effective time by the action manager 310, or the application", and Paragraph [0056], "When the resource manager 320 receives a departure notification, it can either delete the entry, or mark the entry to indicate the departure of the resource", and in Figure 3, #120 includes the device manager module, action manager module, resource manager module, and path manager module, where #120 can be implemented Per device).

Cheng does not disclose when said at least one control device is in a standby mode.

However, as disclosed in the applicant's specification under Background Of The Invention, "The control point device initializes and configures both devices for the AV connection, so that the desired data stream can also be sent. Once an AV connection such as this has been set up, the control point device does not need to control the rest of the data transmission, and the UpnP AV specification does not contain any stipulations that the control point must be active all the time throughout the duration of the AV connection that has been set up" (Paragraph [0005]) in order that "the control point device may also be disconnected from the network" (Paragraph [0005]).

It would have been obvious to one of ordinary skill in the art at the time to create the invention of Cheng to include "Once an AV connection such as this has been set up, the control point device does not need to control the rest of the data transmission, and the UpnP AV specification does not contain any stipulations that the control point must be active all the time throughout the duration of the AV connection that has been set up" as taught by the applicant's admitted prior art in order that "the control point device may also be disconnected from the network" (Paragraph [0005]). Cheng teaches in paragraph [0037] that "an application is provided the option of managing resource reservation, path setting, and scheduling activities directly, or it can request the action manager 310 to manage these activities. By providing an action manager 310, the application can be free from the concerns of detailed resource management and path management" wherein Cheng uses the term application to refer to the User control point as clearly shown in Fig 3 #161. Since Cheng teaches that the functions of control device can be outsourced to an action manager, it would be obvious to one of ordinary skill in

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the art at the time in view of the applicant's admitted prior art for the control device to be in standby mode.

The control point, in the prior art sense, could control these features, or like the embodiment discussed above, can be outsourced to an action manager 310, which may be implemented per device.

(10) Response to Argument

The examiner summarizes the various points raised by the appellant and addresses them individually.

(A) Appellant Argues: *"As indicated above, the Examiner ostensibly alleges that the motivation to modify Cheng is derived from the Appellant's "admitted prior art" in paragraph [0005] of the specification. In response, Appellant submits that the cited passage in paragraph [0005] of the specification is not "admitted prior art" as alleged, but rather, is a description of Appellant's invention itself. That is, paragraph [0005] of the specification containing the aforementioned cited passage is clearly labeled "Invention". Accordingly, the Examiner has attempted to justify a proposed modification to Cheng based on the express teachings of the Appellant, not the prior art. Such a practice is clearly impermissible under Federal Circuit law. See, for example, In re Laskowski, 871 F.2d 115, 10 USPQ2d 1397 (Fed. Cir. 1989) ("Although the Commissioner suggests that [the structure in the primary prior art reference] could readily be modified to form the [claimed] structure, '[t]he mere fact that the prior art could be so modified would not*

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have made the modification obvious unless the prior art suggested the desirability of the modification." (emphasis added)) and *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). Accordingly, for this reason alone, Appellant submits that the instant rejection should be reversed" (**See brief page 6 2nd paragraph**).

In Response:

The appellant has argued that the limitations cited in regard to paragraph [0005] of the appellant's specification is actually the "*express teachings of the Appellant*" (**See brief page 6 2nd paragraph**) due to being under the title of Invention. The examiner respectfully disagrees with this argument and will show that the subject matter in paragraph [0005] is in fact a description of the prior art. Paragraph [0005] of the appellant's specification reads "In the course of UPnP Standardization, a specification for the transmission of AV data (audio/video-data) between network subscriber stations has also been worked out, and was completed in June 2002. The precise title of this specification is : UPnP AV Architecture: 0.83 dated Jun. 12, 2002. This specification defines three different types of devices for the transmission of AV data". Clearly, paragraph [0005] is directed towards the teachings of the UPnP AV architecture: .83 dated Jun. 12, 2002, which the examiner notes is prior art.

Furthermore, to show that these elements are prior art, the examiner will cite analogous teachings from the UPnP AV architecture: .83 dated Jun. 12, 2002.

Page 4 of the UPnP specification reads "Most AV scenarios involve the flow of (entertainment) content (i.e. a movie, song, picture, etc.) from one device to another. As

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shown in Figure 2, an AV Control Point interacts with two or more UPnP devices acting as source and sink, respectively. Although the Control Point coordinates and synchronizes the behavior of both devices, the devices themselves interact with each other using a non-UPnP ("out-of- band") communication protocol. **The Control Point uses UPnP to initialize and configure both devices so that the desired content is transferred from one device to the other.** However, since the content is transferred using an "out-of-band" transfer protocol, the Control Point is not directly involved in the actual transfer of the content. **The Control Point configures the devices as needed, triggers the flow of content, then gets out of the way. Thus, after the transfer has begun, the Control Point can be disconnected without disrupting the flow of content.** In other words, the core task (i.e. transferring the content) continues to function even without the Control Point present".

The examiner asserts that the citations utilized from paragraph [0005] of the appellant's specification in the rejection of claim 1 are analogous to the teachings of at least page 4 of the UPnP specification which is prior art and is therefore not the express teachings of the appellant.

(B) Appellant Argues: *"Given that Cheng does not recognize or address a situation where "at least one control device is in a standby mode", as recited in independent claim 1 of the present arrangement, Cheng also does not address and solve the same problems as the claimed invention" (see brief page 6 3rd paragraph); "Cheng is not concerned with and does not disclose or suggest "whether a second*

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device of said at least two controlled devices, which is AV connected to said first device, has sent a logging-off message" and "when said logging-off message is detected, said first device ends, without an operation from said at least one control device, the AV connection with said second device" as recited in independent claim 1 of the present arrangement" (see brief page 7 4th paragraph); "Cheng does not disclose or suggest a situation where "said at least one control device is in a standby mode" as in the present claimed arrangement. When a device is in standby mode, the device is unable to receive any logoff messages. Cheng does not address the problem of a device not being able to log off "when said at least one control device is in a standby mode" at all. Therefore, Cheng cannot autonomously end "the AV connection with said second device" as recited in independent claim 1 of the present arrangement as Cheng is only able to mark an entry to indicate the departure of the resource when the resources are online and in communication with each other" (see brief page 8 1st paragraph).

In Response:

The examiner respectfully disagrees and notes that the modified Cheng does recognize the situation where at least one control device is in standby mode as shown above in regards to argument **(A)**. In regards to Cheng addressing and solving the same problems as claim 1, the examiner will show how Cheng addresses and solves the problems as claimed.

Paragraph [0007] of the appellant's specification discloses "The invention solves the problem in that a portion of the control point device functionality is implemented in

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media server and media renderer devices for an AV connection". Cheng teaches in paragraph [0037], "In a preferred embodiment, an application is provided the option of managing resource reservation, path setting, and scheduling activities directly, or it can request the action manager 310 to manage these activities. By providing an action manager 310, the application can be free from the concerns of detailed resource management and path management" wherein Cheng uses the term application to refer to the User control point as clearly shown in Fig 3 #161. Furthermore, Figure 3, #120 includes the device manager module, action manager module, resource manager module, and path manager module, where #120 can be implemented per device. Since each device has an action manager capable of managing the activities of the application (control device), the examiner asserts that the device managing the activities of the application or control device (analogous to the applicant's first device), can end the connection in response to a regular logging-off message received by the other controlled device (analogous to the applicant's second device), without an operation from the control device which has requested the action manager to manage these activities. The control point, in the prior art sense, could control these features, or like the embodiment discussed above, can be outsourced to an action manager 310, which may be implemented per device. Since Cheng teaches that the functions of control device can be outsourced to an action manager, it would be obvious to one of ordinary skill in the art at the time in view of the applicant's admitted prior art for the control device to be in standby mode, therefore the modified Cheng provides analogous functionality to the appellant's claimed limitations.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Farhad Ali/

Examiner, Art Unit 2446

Conferees:

/Benjamin R Bruckart/

Primary Examiner, Art Unit 2446

/Joseph E. Avellino/

Supervisory Patent Examiner, Art Unit 2458